IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4.12.2006

Coram

The Honourable Mr.Justice R.Balasubramanian

and

The Honourable Mr.Justice A.C.Arumugaperumal Adityan

CRIMINAL APPEAL Nos.735 & 738 of 2004 & 668 of 2005

C.A.Nos.735 and 738 of 2004:

Ramasamy ... Appellant in C.A.No.735/2004
(Accused No.3)

1. Anthonysamy

2. Veerasamy ... Appellants in C.A.No.738/2004
(Accused No. 1 and 2)

-Vs.-

State rep.by
Deputy Superintendent of Police
CCIW (CID) Cuddalore
CBCID Madras Head Quarters. ... Respondent in both the appeals.

C.A.No.668 of 2005:-

State rep.by
Deputy Superintendent of Police
CCIW (CID) Cuddalore
CBCID Madras Head Quarters. ... Appellant in C.A.No.668 of 2005

-Vs.-

Dr.Ramachandiran ..Respondent in C.A.No.668 of 2005
(Accused No.3)

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Crl.A.Nos.735 and 738 of 2004 against the judgment and conviction dated 31.5.2004 made in S.C.No.183 of 1995 on the file of Additional District and Sessions Judge (Fast Tack Court No.3), Vridhachalam.

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Crl.A.No.668 of 2005 is against the acquittal of A.6 (A.3 in S.C.No.150/1997) as per judgment dated 31.5.2004 in S.C.No.183 of 1997 on the file of Additional District and Sessions Judge, Fast Track Court No.III, Vridhachalam.

For Appellants in C.A.Nos.735 & 738/2004 : Mr.S.Ashok Kumar, SC for Mrs.P.V.Rajeswari in C.A.No.735 of 2004.

Mr. T.Munirathnam Naidu for Mr.R.Karunagaran for A.1 in C.A.No.738 of 2004

Mr.S.Ashok Kumar, SC for Mrs.P.V.Rajeswari for A.2 in C.A.No.738 of 2004.

For Respodent in C.A.Nos.735 & 738 of 2004 & for appellant in in C.A.No.668/2005 : Mr.N.R.Elango, APP

For Respondent in C.A.No.668/2005 : Mr.S.Ashok Kumar, SC for Mr.C.D.Johnson

J U D G M E N T

(Judgment of the Court was delivered by

R. Balasubramanian, J)

In respect of one occurrence namely, custodial death, a crime was registered in Crime No.5 of 1994 on the file of C.B.C.I.D Head Quarters, Chennai against six persons. However, it appears from the materials on record, that two sessions cases came out of that one incident namely, S.C.No.183 of 1995 and S.C.No.150 of 1997. In each case three accused were put up for trial. Substantial evidence was recorded in both the sessions cases separately, though the evidence was almost similar. Almost at the fag end of the trial, it appears wisdom dawned not only on the investigating agency but also on the trial court as well as the counsel for the accused, as a result of which, all the six accused were brought under one umbrella namely, in S.C.No.183 of 1995. The evidence of some witnesses examined in the latter case was transposed as evidence in S.C.No.183 of 1995. Then analysing the evidence of the witnesses in S.C.No.183 of 1995 by a common judgment dated 31.5.2004 in both the Sessions cases the Court of Sessions, namely, Fast Track Court No.III, Vridhachalam acquitted A.4 of all the charges levelled against him; convicted A.5 - we will refer to the details of the offences later on, and

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sentenced him to pay only a fine and acquitted A.6. A.5 has accepted the conviction and sentence and therefore he had not filed any appeal against his conviction before this court. A.3 is before this court in C.A.No.735 of 2004 and A.1 and A.2 are before this court in C.A.No.738 of 2004 . The State is before this Court in C.A.No.668 of 2005 challenging the acquittal of A.6. Heard Mr.S.Ashok Kumar, learned Senior Counsel appearing for all the convicted accused and for the acquitted accused in the appeal filed by the State and Mr.N.R. Elango, learned Additional Public Prosecutor vice versa.

2. In this judgment, we will refer to the parties to the appeals in the same rank in which they were arrayed before the trial court in S.C.No.183 of 1995. In short, the prosecution case is that in the course of investigation in another crime registered on the file of Kammapuram Police Station for the offence of burglary and suspecting the involvement of Rajakannu in that case, brought to the police station some persons at the first instance; some other persons at the second instance; in the interregnum the suspected accused Rajakannu was also apprehended and brought to the police station and in the course of their presence in the police station, some of the persons were assaulted and Rajakannu was done to death in the police station. The police personnel also attempted to outrage the modesty of P.W.6 and therefore punishable under Section 354 I.P.C. is also one of the accusations. We will give in detail, a little later in this judgment the nature of the charges framed; finding rendered by the court below and the sentence imposed. The prosecution, to substantiate their case, examined P.Ws.1 to 56 besides marking Exs.P.1 to P.75 and M.Os.1 to 5. The defence did not let in any oral evidence. But however they marked Exs.D.1 to D.12 on their side.

3. As we noted earlier, though the trial started in two sessions cases in respect of the same transaction, ultimately, all the accused were brought under one sessions case namely, S.C.No.183 of 1995 and only in that judgment, a judgment of conviction and acquittal as indicated above is pronounced. It may be noticed that before bringing all the accused for trial in one sessions case, additional charges were framed in S.C.No.150 of 1997 and those charges also are dealt with. The following are the charges framed in S.C.No.183 of 1995

CHARGE	RANK OF ACCUSED	U/S. I.P.C.
1	A.1 & A.2	U/S.342(9)
2	A.3	U/S.342(2)
3	A.1 & A.2	U/S.348(9)
4	A.3	U/S.348(2)

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CHARGE	RANK OF ACCUSED	U/S. I.P.C.
5	A.1	U/S.330
6	A.1	U/S.330(3)
7	A.1 & A.2	U/S.330 r/w 34
8	A.1 & A.2	U/S.324 r/w 34
9	A.1 & A.2	U/S.330 r/w 34
10	A.1 & A.2	U/S.324 r/w 34
11	A.1 & A.2	U/S.330 r/w 34
12	A.1 & A.2	U/S.324 r/w 34
13	A.1	U/S.330
14	A.1	U/S.324
15	A.3	U/S.331
16	A.3	U/S.326
17	A.3	U/S.355
18	A.1 & A.2	U/S.330 r/w 34
19	A.1 & A.2	U/S.324 r/w 34
20	A.1	U/S.330
21	A.1	U/S.330
22	A.3	U/S.330
23	A.3	U/S.354
24	A.1	U/S.330
25	A.1	U/S.324
26	A.1 & A.2	U/S.302 r/w 34
27	A.1 & A.2	U/S.201 r/w 34
28	A.1	U/S.220 (9)
29	A.1	U/S.218
30	A.4	U/S.201 r/w 109
31	A5 & A.1	U/S.201 r/w 34
32	A.5	U/S.217
33	A.5	U/S.218
34	A.6	U/S.201

The following are the charges framed in S.C.No.150 of 1997.

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CHARGE	RANK OF ACCUSED	U/S. I.P.C.
1	A.1	U/S.201 r/w 109
2	A.2 & A.4	U/S.201 r/w 34
3	A.2	U/S.217
4	A.2	U/S.218
5	A.3	U/S.201
6	A.1 to A.5	U/S.120-B r/w 218, 201 & 465
7	A.3	U/S.465

At the end of the Trial, the learned Trial Judge found A.1 and A.2 guilty under the following sections.

> "342 I.P.C.(9 counts); 348 I.P.C. (9 counts); 330 read with 34 I.P.C; 324 read with 34 I.P.C.; 302 read with 34 I.P.C.; 201 read with 34 I.P.C. and sentenced the convicted accused for the offence of murder to imprisonment for life together with a fine of Rs.2,000/- carrying a default sentence. A.1 was also found guilty under Sections 330 (2 counts); 324 (2 counts); 220(9 counts) and 218 I.P.C., for which separate sentences were imposed. A.2 was found guilty under Sections 201 read with 34 I.P.C.; 217 and 218 I.P.C. for which he stands sentenced to pay only a fine amount. A.3 was found guilty under Sections 331, 326 and 354 I.P.C. for which he stands sentenced to undergo various periods of imprisonment. A.5 was found guilty under Sections 201 read with 34 I.P.C., 217 and 218 I.P.C., for which he stands sentenced to pay only a fine amount. As noted earlier, A.4 and A.6 were acquitted of all the charges. A.1, A.2, A.3 and A.5 were also acquitted of the remaining charges."

4. P.W.1 is the wife of the deceased. P.Ws.4 and 5 are their children. P.Ws.3 and 6 are the elder brother and elder sister of Rajakannu, since deceased. P.W.8 is the sister of P.W.6 while P.W.7 is the nephew of P.W.6. P.W.3 and the deceased are living in the same house at Mudanai Village. The prosecution witnesses and the deceased belong to Kurava community. Seven years prior to the date when P.W.1 was examined in court (her examination was on 17.4.2000). A.1, A.2 and four more police personnel came to P.W.1's house in a van. P.W.1 identified A.1 and A.2 present in court as the persons, who came to her house on that day. P.W.1's husband had left for work early on that day morning. Police enquired P.W.1 as to where

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her husband is, for which, she answered that her husband had already left for work. Immediately the police personnel made P.W.1, P.W.3, P.W.4 and P.W.5 to board the van, in which they came (P.W.16 is the driver), stating that jewellery valued at Rs.1,50,000/- had been stolen; her husband's involvement is suspected and therefore they are taken to the police station for interrogation. Thereafter the witnesses and the police travelled to a nearby Rice Mill where they picked up another individual by name Govindaraju (this court is informed that Govindaraju died pending investigation). Govindaraju is related to P.W.1. The police party travelled to several places on that day along with P.Ws. 1, 3, 4, 5 and Govindaraju and reached the police station at 6.00 p.m. on that day (we state from the records that this was on 20.3.1993). P.W.17 and 24 knew police picking up the witnesses from the Village as referred to above. In the police station, P.W.1 was asked to stand in the thatched shed near the front verandah of the police station and the remaining four were taken to the western room inside the police station. A.1 with lathi beat P.W.1 telling her that she must bring the stolen property as well as her husband, resulting in contusion all over her body. Tying the hands of P.W.3 from behind, A.1 beat him with lathi and likewise P.W.4 was also beaten by A.1. A.1 fisted P.W.5. Making Govindaraju, since deceased to sit in the floor with the legs wide apart, A.1 beat him with lathi. A.1 was insisting that Rajakannu had stolen the property and therefore the stolen property must be immediately restored. Then the persons, who were taken to the western room inside the police station were brought out at 10.00 p.m on that night. All the witnesses were given dinner. Later, at 11.00 p.m. A.1 left for his house. On the next day namely, on 21.3.1993 at about 12.00 noon, police brought P.Ws.6,7 and 8 from Pandannallur to the Police Station. In the same van the police went out and came back at 4.00 p.m. with Rajakannu, since deceased. On the arrival of Rajakannu, police allowed P.Ws.1,3,4 and 5 to go home by A.1 giving a sum of Rs.10/- to them. A.1 advised P.W.1 to bring some non-vegetarian food on the next day when she comes back to the police station. P.Ws.1,3,4 and 5 boarded a bus to reach their Village. On the next day namely, on 22.3.1993 P.W.1 alone came to the police station with cooked food by about 1.00 p.m. At that time she found her husband naked and tied to a window. He was being assaulted by lathi. When P.W.1 questioned the police as to why he is assaulting like that, the police beat her also asking her to keep quite. P.W.1 noted bleeding injuries on the person of her husband. Then A.1 and A.2 by giving shoulder support to her husband slowly moved him to the thatched shed outside the police station. P.W.7 and Govindaraju, since deceased were also brought to the thatched shed. P.W.1 served food to P.W.7, Govindaraju, since deceased and her husband, since deceased. However her husband could take food only four mouthful and thereafter he could not take. P.W.1's husband became unconscious. Stating that Rajakannu, since deceased, is pretending, A.1 and A.2 fisted on the flanks of her husband. It was around 2.00 p.m. P.W.1 asked them as to why they are assaulting her

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husband and she was also beaten, which made her fall down. Then a Doctor (P.W.9) was brought to the police station, who gave two injections to P.W.1 and her husband, since deceased. Some tablets were given, which P.W.1 alone was able to swallow and not her husband. P.W.7 and Govindaraju, since deceased were also given some tablets. Some ointment was given to P.W.1 to apply to the wounds on the body of her husband, which she accordingly applied. Even thereafter A.1 and A.2 holding the tuft of her husband's head dragged him to the western room inside the police station. In the movement, the dhoti on the person of her husband came off. A.2 sarcastically commented that Rajakannu is acting, kicked on his chest forcibly. She found her husband's face and body bloated and she also found that her husband was not breathing. A person in the police station tried to give water to her husband, but however water could not get into her husband's system. Then P.W.1 questioned them as to why her husband was beaten like that. The police asked her to leave home by forcibly making her board a bus which came at about 3.00 p.m. that side. Even at that time, P.W.1 noticed that her husband was in a precarious condition. P.W.1 reached the Village at 6.00 p.m. where she was informed by P.Ws.17, 24 and others that police informed them at 4.15 p.m. that Rajakannu had escaped from the police station. P.W.1 responded by stating that when she left the police station, her husband was in a precarious condition and therefore there is no chance for him to escape. On the next day namely, on 23.3.1993, P.Ws.1,3,17,24 and 25 went to the police station to enquire. P.W.25 entered the police station to enquire and he was informed at that time also that Rajakannu had escaped from the police station. The witnesses boarded a bus and reached Vridhachalam. When they were on their way to Kumaramangalam Village, they saw the police van coming in the opposite direction. The villagers stopped the van and questioned the police personnel present in the van as to what happened to Rajakannu. A.1, who was in the van once again said that Rajakannu had escaped from police custody and he invited the witnesses to come to the police station for a talk. However P.W.1 reached the District Head Quarters at Cuddalore where meeting the Superintendent of Police, she gave the complaint Ex.P.1. Then P.W.1 went to Vridhachalam, where to the higher official, she gave the complaint. P.W.1 also gave a complaint to the Revenue Divisional Officer, P.W.41 and in the enquiry conducted by the Revenue Divisional Officer, she had given a statement, in which her left thumb impression was taken by P.W.41. Ex.P.2 is the said statement. The High Court directed compensation to be paid to P.W.1, her daughter, P.W.4 and P.W.5 A direction was given to C.B.C.I.D. to investigate the Crime. She saw her husband's photograph, after his death, shown to her by the police and she identified that the person in the photograph is her husband. Ex.P.3 series are the photographs. P.Ws.3,4 and 5 had given evidence more or less on the same lines as spoken to by P.W.1, except the assault perpetrated on Rajakannu in the police station on 22.3.1993.

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5. P.W.6 would state that on a particular day namely, Sunday A.1 and A.2 along with some other police personnel came to her house to find out whether Rajakannu, since deceased was in her house and whether Rajakannu had given her the stolen property. P.W.6 answered in the negative. The police yet searched her house. The police made P.Ws.6 and 8 to board the van. The house of P.W.7 was also searched and he was also forced to board the van. P.W.7 was beaten at that time. Then all of them reached the investigating police station. The police made P.W.6, P.W.8 and Govindaraju to sit in the thatched shed outside the police station. A.1 went home. There was some light in the thatched shed. A.3 took P.W.6 inside the room in the police station. At that time, she noticed P.W.7 tied to a window and being beaten. P.W.7's face was found bloated. Then P.W.7 was untied and asked to come near the place where P.W.6 was asked to stand and then A.3 commanded P.W.7 to undress P.W.6. (The trial court noted that this witness started weeping at that stage and closed the face) and beat her. Then P.W.6 was asked to go to the thatched shed. Some one outside questioned A.3 as to why he is putting P.W.6 to shame. Govindaraju, since deceased consoled P.W.6. P.Ws.6 and 8 were lying in the thatched shed. On the next day morning, P.Ws.6 and 8 were asked to leave the police station. Six days later P.W.7 and Govindaraju came home and she found P.W.7 had suffered extensive injuries on his body, which included a fracture in the hand and big toe. P.W.7 had given evidence more or less on the same lines as spoken to by P.W.6. P.W.7 would also state that he had suffered a fracture on his right hand due to the assault by police in the police station. P.W.8 would depose that police forcibly took P.Ws.6,7 and 8 by beating them to the police station and they reached the police station at 12.00 noon. There also he, P.Ws.6 and 7 were beaten. A.1 to A.3 present in court were the persons present at the police station at that time. P.W.8 saw P.Ws.1,3,5 and others in the police station. At 4.00 p.m. on that day, Rajakannu was brought to the police station and at 7.00 p.m. in the night, they were served dinner. P.W.8 identified the person available in Ex.P.3 photographs as that of his uncle - the deceased in this case. P.W.9 is the Doctor, who was called to the police station to treat P.W.1 and Rajakannu as spoken to by P.W.1. P.W.9 was examined by P.W.41 namely, the Revenue Divisional Officer and Ex.P.6 is the statement given by him before P.W.41. However he was treated as hostile at that stage, since he did not support the prosecution case that he treated P.W.1 and Rajakannu by giving allopathic medicine. P.W.10 had given the complaint to the investigating police station that from his house jewels weighing 43 1/2 sovereigns and cash of Rs.1,141/- were stolen and Ex.P.7 is the said complaint.

6. P.W.39 is the Deputy superintendent of Police, who perused Ex.P.7, the complaint given by P.W.10 and registered in Crime No.107 of 1993 under Sections 457 and 380 I.P.C. The complaint was given on

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20.3.1993 and Ex.P.19 is the printed First Information Report. There is a note on Ex.P.19 that A.5 must investigate that complaint and accordingly A.5 took up investigation on the same day. P.W.39 observed the crime scene in that complaint namely, Ex.P.19. P.W.39 suspected the involvement of Kurava community people in that crime and therefore directed A.5 to proceed with the investigation in that direction. The complaint given by P.W.1 to the Superintendent of Police was sent to P.W.39 on 25.3.1993 and the said complaint is Ex.P.1. On that complaint, P.W.39 made an endorsement to A.5 that he should register that complaint under the caption "man missing" and that he must personally take up the investigation in that case. That complaint stands registered in Crime No.114 of 1993 on 26.3.1993 at about 10.00 p.m. under the caption "man missing" and Ex.P.48 is the printed First Information Report for that complaint. Further enquiry made by P.W.39 revealed that there were materials indicating illegal detention of some persons and torture in the police station and therefore directed the enquiry to be conducted by the Revenue Divisional Officer under Section 145 of Police Standing Orders. P.W.41 is the Revenue Divisional Officer and he conducted the enquiry under Section 145 of the Police Standing Orders. Wide publication was made by beating "tom tom" in the Village and P.W.41 conducted enquiry on that incident on 7.4.1993, 13.4.1993, 19.4.1993 and 5.7.1993 during which time he examined twenty six witnesses. Exs.P.46, P.22, P.50, P.25, P.31, P.24, P.51 (A.1's statement), P.13, P.47, P.45, P.44, P.20, P.52 (A.2's statement), P.15, P.2 (P.W.1's statement), P.5, D.1, P.6 and P.53 are the statements recorded by him from various witnesses. P.W.41 was examined as P.W.49 in S.C.No.150 of 1997, in which trial he deposed that on 7.4.1993 he examined A.6 and recorded his statement Ex.P.66. P.W.49 in S.C.No.150 of 1997, who is P.W.41 in S.C.No.183 of 1995, would state that when he examined A.6, he said that at 10.00 p.m. on 22.3.1993 Rajakannu appeared before him complaining body pain and he treated him. A.6 had also sated that as A.5 requested him he gave the certificate to the above effect. Ex.P.67 is the xerox copy of the certificate produced by A.6 before P.W.49 and Ex.P.68 is the original of Ex.P.67. Ex.P.69 is the statement of A.1 (treated as Ex.P.75 in S.C.No.183 of 1997). Exs.P.70, P.47, P.33, P.22, P.39, P.20, P.15, P.48, P.46, P.29, P.27, P.12, P.2, P.11, P.50, P.54, P.53, P.17 and P.71 are the statements recorded by him from the various witnesses. P.W.49 sent Ex.P.71 (Ex.P.71 is Ex.P.53 in S.C.No.183 of 1995) report to the District Collector. P.W.48 is the Inspector General of Police (Crimes). On a proceeding initiated by P.W.1 in the High Court of Madras, the High Court passed the order Ex.P.60 directing his office to investigate the crime. Accordingly, P.W.48 directed the Deputy Superintendent of Police, C.C.I.W., Cuddalore by name Sri. Venkusha to register a crime against the accused in this case. Ex.P.61 is the proceeding issued by P.W.48. Accordingly, the Deputy Superintendent of Police by examining P.W.1 and others recorded their statements and then registered that statement in Crime No.5 of 1994 in C.B.C.I.D. Head

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Quarters (Crimes) under Sections 342, 324, 326, 354 and 302 I.P.C. Exs.P.62 and P.63 are the affidavits of P.W.1 and Govindaraju, since deceased filed in the High Court. Ex.P.64 is the printed First Information report for the complaint registered by the Deputy Superintendent of Police Venkusha as indicated earlier. Exs.P.59 and P.65 are the statements of P.W.1 and Govindaraju given to the Deputy Superintendent of Police. P.W.48 was monitoring the investigation done by the said Deputy Superintendent of Police, who was assisted by P.W.49 and others. The Deputy Superintendent of Police Venkusha died on 25.2.1999 and one of the police inspectors, who assisted him also died. In all, three reports were filed before the High Court by P.W.48 on the investigation already done by Venkusha, assisted by Inspectors of Police. Ex.P.66 is the interim order dated 11.6.1994 passed by the High Court. Ex.P.67 is the final report filed by P.W.48 before the High Court on 21.7.1994. Pursuant to a questionnaire, P.W.48 filed a further final report giving Ex.P.68 on 30.7.1994. Ex.P.69 is the sanction order to prosecute A.1. Ex.P.70 is the sanction order to prosecute A.2 and A.3. Venkusha, Deputy Superintendent of Police, while alive and after completing the investigation filed the final report in court against all the accused on 9.11.1994 under Sections 342, 348, 324, 330, 302, 201, 220, 218 read with 34, 326, 331, 355 read with 109 I.P.C.

7. P.W.49 is one of the Inspectors of Police, who was assisting the Deputy Superintendent of Police Venkusha in the investigation. Since Venkusha is dead, he had deposed on the investigation done by Venkusha. Hereafter in this judgment we will refer Mr.Venkusha, Deputy Superintendent of Police as the "Investigating Officer".

> "The Investigating Officer went to Kammapuram Police Station on 11.5.1994 and with the help of P.W.34 and another prepared a rough sketch of the police station. P.W.34 is the Senior Draftsman in Neyveli Lignite Corporation and as requested by the Investigating Officer, he prepared the sketch/blue print. The Investigating Officer went to the Village to examine P.Ws.1,3,4 and 5. But as they were not available in the Village, he could not examine them. The Investigating Officer went on probing further from the nearby police station as to whether any crime have come to be registered either under Section 304A I.P.C. or under Section 174 of the Code of Criminal Procedure. The Investigating Officer came across a crime registered in Meensurrity Police Station in Crime No.167 of 1993 under Section 304A I.P.C., on 22.3.1993. The Investigating Officer verified the case diary in that crime number and had a look at the photographs and the negatives available there. The investigating officer recovered Ex.P.4 and examined P.W.2.

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P.W.2 is a resident of Meensurrity Police Station and he is having a photo studio in Chennai - Kumbakonam Main Road. On 23.3.1993, he photographed the dead body found in a public place near the temple and Ex.P.4 is the entry made by him in his photo studio book. He photographed the dead bodies from three different angles and M.O.1 series are the photographs and the negatives.

> "The Investigating Officer then went to the Government Hospital at Jayankondam and collected the post-mortem report of the deceased concerned in Crime No.167 of 1993 on the file of Meensurrity Police Station. The Investigating Officer examined further witnesses by recording their statements on 13.5.1994. On 14.5.1994, the Investigating Officer examined P.Ws.1,3 to 9, 16, 25 and 39 by recording their statements. Further witnesses were examined on 15.5.1994, 17.5.1994 and 18.5.1994. On 19.5.1994, the Investigating Officer gave a requisition to the Court at Jayamkondam to send the blood stained earth mixed with human hair recovered by the police officer of Meensurrity Police Station from the place where the dead body concerned in Crime No.167 of 1993 was found and the viscera to the laboratory. The Investigating Officer sent P.W.7 to the Government Head Quarters Hospital at Tanjore to examine him for injuries, if any sustained by him.

8. P.W.43 is the Private Medical Practitioner having his clinic at Pandanallur. According to him seven years prior to he giving evidence in court (the evidence was on 8.6.2000) P.W.7 appeared before him with his right hand bandaged. When enquired P.W.7 told him that he is taking native treatment for the fracture sustained. P.W.43 gave him injection and some medicines to reduce the pain and the swelling. P.W.44 was the Duty Doctor in the Government Head Quarters Hospital at Tanjore. At about 11.10 a.m. on 19.5.1994, P.W.7 appeared before him along with the Police Inspector for treatment. P.W.7 informed him that A.1 and A.2 beat him with hands and lathi on 21.3.1993 in the police station, to which he was taken from Pandanallur. P.W.7 also said him that his hands and legs were tied to the window and then A.1 and the police beat him. P.W.7 disclosed that he was continuously beaten and he was kept in the police station for almost five days. P.W.44 on examination found P.W.7 having a swelling on his right forehand 1" x 1" with a touch pain and a swelling on the left big toe. P.W.44 referred P.W.7 for x-ray. Ex.P.55 is the Accident Register issued by him. The symptoms noted in Ex.P.55 are as hereunder:-

> "Alleged to have been assaulted by Kammapuram SI and PC on March, 1993. (21st March), by குண்டான்தடி

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in his house at Pandhanur and was taken to Kammapuram Police station. There he was beaten by S.I. of police by குண்டான்தடி after tying him in a window on hand, hip and leg. Again on the next day, he was beaten by SI in the police station and from there and he was shifted to some unknown station (torn) and then he was released at Vridhachalam by giving வேஉடிடி and Rs.250/-.

Following assault has had injury over Right forearm and Left foot.

O/E: Patient is conscious. Well oriented. PERLA present.

1. Swelling of size 1 x 1" over the right forearm.

2. In thickened area and tenderness over the right big toe.

AP

ADV x - Ray Right forearm

Lateral View

AP

x - Ray Left foot

Lateral View

Referred to 24 Hours fracture service for opinion regarding the age and nature of fracture."

P.W.45 is the Radiologist in the Government Head Quarters Hospital at Tanjore and she x-rayed P.W.7 for injuries shown to have been sustained by him. M.Os.3 and 4 are the x-rays for the right hand and left foot. Ex.P.57 is her report. In her report she had stated that the Ulna in the right forehand had fractured and it had healed. According to P.W.45 and Ex.P.57, the report, fracture would have occurred any time between six months and 18 months before the date she examined him. P.W.45 x-rayed P.W.7 on 19.5.1994. P.W.47 is the Assistant Professor of Gastroenterology in the Government Hospital at Tanjore. On 19.5.1994 he advised P.W.7 to take x-rays. He also found on examining M.Os.3 and 4 that the bone in the right forehand had joined and in the left foot, there was no fracture. He also advised Govindaraju, since deceased to be x-rayed and M.O.5 is the x-ray of Govindaraju, which do not disclose any fracture.

9. We again take up the investigation done by the Investigating Officer.

"On 21.5.1994 the Investigating Officer examined P.Ws.14, 12, 13, 11, 23, 21, 18, 10, 28 and others by recording their statements. On 22.5.1994, the Investigating Officer examined P.Ws. 22, 35, 36, 37, 29, 30, 27 and 38 by recording their statements. Manikkavasagam, the Inspector of Police assisting the

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Investigating Officer examined the Doctors, who treated P.W.7 by recording their statements. The Investigating Officer examined P.W.31 on 25.6.1994 and P.W.26 on 5.6.1994. At 2.00 p.m. on 22.6.1994 the Investigating Officer recovered M.O.2, a private van from P.W.16 in the presence of P.W.42 and another under Ex.P.54."

P.W.42 is the owner of M.O.2. He witnessed the recovery of M.O.2 by the Investigating Officer under Ex.P.54. P.W.11 is the Village Menial attached to the Village Administrative Officer of Kuruvallappar Koil. The Village Administrative Officer sent for him about seven years before he gave evidence, stating that in a public place a dead body is found lying and accordingly P.W.11 reached that place where he found the dead body of a male lying fully naked on the south of east-west road leading to Jayamkondam. Ex.P.3 series photographs relate to the dead body which he had seen. He gave a complaint Ex.P.8 in the police station. P.W.12 is another Village Menial to the Village Administrative Officer at Kuruvallappar Koil. His evidence also shows that he observed the dead body as spoken to by P.W.11. On seeing Ex.P.3 series photographs, he identified the person shown in the photographs, as the person, whom he saw dead as referred to earlier. P.W.13's evidence is also on the same lines as spoken to by P.Ws.11 and 12. P.W.14 is the Village Administrative Officer himself. His evidence is also on the same lines as spoken to by P.Ws.11 to 13. P.W.15 observed the dead body as referred to above and witnessed the preparation of Ex.P.9, the Observation Mahazar and recovery of blood stained earth with human hair under Ex.P.10 Mahazar by the Inspector of Police, Meensurrity Police Station. Ex.P.3 series photographs relate to the dead body which he had seen. P.W.16 is the driver of the private van M.O.2. His evidence corroborates the evidence of P.W.1 and others as to the manner in which P.Ws.1,3,4,5,6,7,8 and the deceased were taken to the police station. Ex.P.11 is the trip sheet. P.W.42 is the owner of the vehicle. Ex.P.12 are the relevant pages in the trip sheet book. He was examined by P.W.41 and Ex.P.12 is his statement. Ex.P.14 series are the counter foils of the trip sheets. P.W.17 is a member of the Taluk Committee of Marxist communist party of India. He knows P.W.1, the deceased, P.W.3 and their family for the past twenty years. He would depose that on 20.3.1993, a van halted near the house of P.W.1 and A.1 alighted from the said van. A.1 enquired the whereabouts of P.W.1's husband. When P.W.1 replied that her husband had already gone out, A.1 made P.Ws.1,3,4 and 5 board the van and enquired here and there in the Village questioning as to whether any one of them had seen Rajakannu, since deceased. When P.W.17 asked him as to why he is enquiring, A.1 replied that two days earlier a theft had taken place and therefore he is suspecting the involvement of Rajakannu. A.1 also assured that if some clue is available regarding Rajakannu, he will let off P.Ws.1,3,4 and 5. On the next day, Rajakannu was apprehended by the Villagers and

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Kammapuram police was informed about that. The same van which came to the Village the earlier day, came again at 1.00 p.m. in which Rajakannu, since deceased was taken. On that evening itself P.Ws.1,2,4 and 5 returned to the Village. P.W.1 informed P.W.17 that the police have not only assaulted the witnesses but also Rajakannu. On the following day, P.W.1 went to the police station with cooked food and in the evening, police came in the same van to the Village and said Rajakannu had escaped from the police station. P.W.1 returned to the Village at 6.30 p.m. and when told about her husband escaping from the police station, P.W.1 said that when she left the police station Rajakannu was lying unconscious and therefore there is no possibility for him to escape. On the next day morning P.W.17 along with others went to the police station to enquire at about 9.00 a.m. They were informed on enquiry that in the previous evening Rajakannu escaped and they were asked to enquire the Sub Inspector of Police, when he comes. He would also state that on their way back to the Village, they found A.1 coming in the van and when asked he also affirmed that Rajakannu escaped at about 4.30 p.m. on the earlier day. P.W.17 was examined by P.W.41 and Ex.P.15 is his statement. He would state that the person in Ex.P.3 series photographs is Rajakannu. The evidence of P.W.24 is on the same lines as spoken to by P.W.17. P.W.25 had given evidence more or less on the same lines as spoken to by P.Ws.17 and 24. P.W.18 would depose that Ex.P.3 series photographs do not relate to the deceased. But however she admitted that during investigation, she identified Rajakannu as the person in the photographs. At that stage, she was treated as hostile. P.W.19 would depose that the photographs shown to him by the investigating officer namely, Ex.P.3 series relate to the deceased. The evidence of P.Ws.20, 21 and 24 is to the same effect.

10. P.W.22 during the relevant time was on bandobast duty in Meensurrity Police Station. On 22.3.1993 he was in the police station at Meensurrity and at that time he received an information that in Kuruvallappar Village Road, a dead body is lying with injuries. P.W.22 immediately went to the crime scene where he found an unidentified dead body lying. Enquiries made by him to fix the identity of the dead body did not yield any result. P.W.11 gave a complaint on that incident, which is Ex.P.8. On 22.3.1993 P.W.11 appeared in the police station and gave the complaint to the Head Constable on duty. Ex.P.8 is the said complaint, which the Head Constable registered in Crime No.167 of 1993 under Section 304A I.P.C. Ex.P.16 is the printed First Information Report. P.W.22 took up the investigation in that case and reached the crime scene, where at 9.00 a.m. in the presence of witnesses he prepared Ex.P.9, the Observation Mahazar and Ex.P.19 the rough sketch from the crime scene. He recovered blood stained earth and human hair under Ex.P.10. From 10.00 a.m. to 12.00 noon on that day, P.W.22 conducted inquest over the dead body in the presence of panchayatdars and witnesses and prepared Ex.P.18, the inquest report. During inquest

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he found on the dead body an injury on the left side of the head and on the left ear. The body was found naked. He caused photographs of the dead body to be taken and Ex.P.3 series are the photographs and the negatives. Then P.W.22 sent the dead body to the hospital for post-mortem. P.W.22 would depose that the complaint in Crime No.167 of 1993 was closed as "undetected" on 6.3.1994.

11. P.W.26 is an apprentice during the relevant time in Neyveli Lignite Corporation. His father was a teacher in the panchayat Union School and they had a van bearing Registration No. TCF 1533. Sometimes P.W.26 used to drive that van. On 22.3.1993 at about 5.00 p.m. he drove the van to Mudanai Village in which some policemen travelled. Near the School in Mudanai Village, the police informed that Rajakannu had escaped from the police station and if he is seen anywhere he should be secured. Then the van went back towards Kammapuram and enroute the head constable alighted. Then the van was sold. P.W.27 during the relevant time was the constable in Kammapuram Police Station. P.W.10 appeared before him and gave a complaint of theft, which was registered. The complaint was earmarked for investigation to be done by A.5. P.W.27 handed over the express records to the Court as well as to the higher officials. Next day he returned to Kammapuram Police Station and he deposed that he did not remember, who were all present at that time in the thatched shed outside the police station. A.1 told P.W.27 that he was assigned the duty to serve summons. A.1 received a phone call from Vridhachalam stating that in Village Mudanai a person had been secured. A.1 immediately directed P.W.27 to go in the company of P.Ws.29 and 36 to Mudanai and bring the person secured. P.W.27 went along with the other persons in a van to Mudanai Village, where on reaching the village, they found a person tied. On the police reaching the village, the secured person was untied and he was brought to the police station. Then P.W.27 left the police station to serve summons. At 4.00 p.m. on 22.3.1993 P.W.27 returned to the police station. At that time A.1 told P.W.27 that the person brought by P.W.27, the earlier day to the police station had escaped. A.1 told that to P.W.35 also at that time. P.W.27 and others searched for the escaped person in all places but returned to the police station at about 10.00 p.m. in the night without any clue about the whereabouts of the escaped person. Then P.W.27 went to his house. He was not examined by A.5. However P.W.27 was examined by P.W.41, the Revenue Divisional Officer and Ex.P.20 is the statement. Since he did not support the prosecution case on A3 outraging the modesty of P.W.6, he was treated as hostile. P.W.28 is another police constable in Kammapuram Police Station, who speaks about bringing Rajakannu to the police station as spoken to by P.W.27. He would also depose that P.W.1 brought lunch for Rajakannu and then she left. At about 4.15 p.m. on that day, A.1 informed him that Rajakannu had escaped. It was on 22.3.1993. P.W.28 was examined by P.W.41 and his statement is Ex.P.23. P.W.29 is another police constable, who speaks about A.1 registering the complaint

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given by P.W.10 on 20.3.1993 and the police party leaving in search of the suspected accused Rajakannu. He would also depose that the police party brought P.W.1 and Govindaraju to the police station and ultimately Rajakannu was brought to the police station as spoken to by the earlier witnesses. P.W.29 was examined by P.W.41 and his statement is Ex.P.24. At that stage, he was treated as hostile, since he did not support the prosecution case on the rest of the materials. P.W.30 is another police constable, who would state that A.1 told him that Rajakannu after enquiry had escaped. Since he did not support the prosecution case on material aspects, he was treated as hostile. P.W.31 was the duty Doctor in Jayankondam Hospital on 23.3.1993. He conducted post-mortem on the unidentified dead body concerned in Crime No.167 of 1993 and during post-mortem he found various symptoms as noted by him in Ex.P.29,the post-mortem report. Ex.P.30 is his final opinion.

> "External Injuries:-
>
> (1) A lacerated wound 6 c.m. x 3 c.m. bone deep over the left temporal area with the upper aspect of left ear torn.
>
> (2) A superficial abrasion 2 x 1 cm above the right eyebrow.
>
> (3) A superficial abrasion 4 x 2 cm right molar region below right eye.
>
> (4) A superficial abrasion 6 x 4 c.m. anterior aspect of left lip.
>
> (5) Fracture ribs 1 to 6 left side anterior aspect (front).
>
> Internal Examination:-
>
> Thoracic cavity contains 2 litres of altered blood. Stomach with contents 500 grams contains 400 grams of partly digested cooked rice with no specific odour. Bladder Empty. Heart:(L) empty. right chamber contain blood. Lungs (right) 400 grams (left) 350 grams normal but pale. Liver 850 grams, pale. All the other internal organs were normal but pale. Skull and Brain - no fracture Skull, Brain normal but pale."

The Doctor opined that death is due to shock and haemorrhage and fracture of ribs. All the injuries are ante mortem in nature. External injuries 1 to 4 could have been caused by beating with lathi. The fracture of ribs may be due to fisting and kicking on the chest. External injuries 1 to 4 are simple while the fracture of the ribs is grievous. Death would have occurred 24 to 36 hours prior to autopsy. P.W.32 is the Head Constable in Kammapuram Police Station, who would state that A.1 was the Sub Inspector while A.2 and A.3 were constables in that police station. He speaks about the complaint given by P.W.10 registered in Crime No.107 of 1993 under Sections 457 and 380 I.P.C. and A.1 and others proceeding to investigate the said crime. According to him, on 22.3.1993

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Rajakannu was brought to the police station and made to wait in the verandah. At 4.00 p.m. on 22.3.1993 the station constable told him that Rajakannu is not available in the police station. Ex.P.31 is the statement of P.W.32 before P.W.41, the Revenue Divisional Officer. Ex.P.26 is the general diary in Kammapuram Police Station. Ex.P.32 is Part III register containing details of conviction and pages 35 and 36 is for the period from 17.3.1993 to 30.3.1993. Ex.P.34 is the Sentry Relieving Book. Page 23 of that book is for the period from 20.3.1993 to 24.3.1994 and it is Ex.P.35. Every police constable will have a pocket note book. Ex.P.36 is the pocket note book of A.2. From that stage onwards, since he did not support the prosecution case, he was treated as hostile. P.W.33 during the relevant time was IX Metropolitan Magistrate, Chennai. He examined certain witnesses under Section 164 of the Code of Criminal Procedure, pursuant to the order, Ex.P.40 passed by the higher court. Ex.P.41 is the statement of one Rajendran/P.W.35 examined under Section 164 of the Code of Criminal Procedure. P.W.35 is the police constable attached to Kammapuram Police Station during the relevant time and he speaks about the complaint given by P.W.10 and registered by A.1 in Crime No.107 of 1993. P.W.35 assisted A.1 in the investigation of that crime. He would depose that A.1 brought some persons from Mudanai Village for enquiry in connection with that case. At 5.00 p.m. on 21.3.1993 Rajakannu was brought to the police station and the villagers, who had already been brought from the village, have been allowed to go home. He was informed that Rajakannu had escaped from the police station on 22.3.1993. Ex.P.44 is the statement of this witness recorded by P.W.41, the Revenue Divisional Officer. Since thereafter he did not support the case of the prosecution, he was treated as hostile.

12. P.W.36 during the relevant time was Grade I Constable in Kammapuram Police Station. He speaks about the complaint given by P.W.10 on 20.3.1993 and the investigation commenced by A.1 in that crime number. He would depose that many persons were brought from the village and interrogated in the police station. Ex.P.45 is his statement recorded by P.W.41, the Revenue Divisional Officer. Since he did not support the prosecution case thereafter, he was treated as hostile. The evidence of P.W.37 is more or less on the same lines as spoken to by P.W.36. Besides, he would state that he assisted A.1 while he investigated the complaint given by P.W.10 and that in the course of investigation, they went in search of Rajakannu to several places. His evidence shows that police was informed that Rajakannu had been secured in Mudanai Village and accordingly police personnel went and brought Rajakannu to the Police Station at about 2.00 p.m. on 22.3.1993. Thereafter P.W.37 went for lunch and at about 4.00 or 4.30 p.m. he came to know that Rajakannu had made good his escape from the police station. Ex.P.46 is his statement recorded by P.W.41, the Revenue Divisional Officer. Since thereafter he did not support the prosecution case, he was treated as hostile. P.W.38 is Grade I Police Constable in

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Kammapuram Police Station. After being on duty in other places, he attended the roll call in Kammapuram Police Station on 22.3.1993. After doing duty in the forenoon as Sentry Constable, he went home for lunch and returned at 4.30 p.m. At that time another constable by name Kathiresan informed him that a person by name Rajakannu was brought to the police station for interrogation and that he is lying in the thatched shed outside the police station and that A.1 is taking rest in his room. Leaving duty with P.W.38, the said Kathiresan left. However when P.W.38 went to the thatched shed, he found none sleeping there. P.W.38 woke up the Sub Inspector of Police and asked him. At that time A.1 told him that the said person was only in the company of Kathiresan and probably he would have run away. Ex.P.47 is his statement recorded by P.W.41, the Revenue Divisional Officer. Since he did not support the prosecution case thereafter, he was treated as hostile. P.W.40 had signed as a witness in Ex.P.49.

13. P.W.46 examined the viscera preserved from the dead body concerned in Crime No.167 of 1993 on the file of Meensurrity Police Station. On examination she did not find any poison in the said viscera. Ex.P.28 is her report. The evidence of the witnesses, whom we have referred to above have come on record in S.C.No.183 of 1995. The entire crime was investigated by the Deputy Superintendent of Police Venkusha, who is no more. The investigation done by Mr.Venkusha is spoken to by P.W.49. The evidence of P.Ws.37, 38, 39, 34, 35, 40 and 50 recorded in S.C.No.150 of 1997 stands transposed as evidence of witnesses Nos.50 to 56 in S.C.No.183 of 1995 and we summarise hereunder their evidence so recorded and transposed. However for convenience sake, we will continue to summarise their evidence in the rank given by them in the array of witnesses in S.C.No.183 of 1995. P.W.50 had already been examined as P.W.46 in S.C.No.183 of 1995. Therefore we are not restating her evidence except stating that the viscera report given by her for Rajakannu stands marked as Ex.P.58. P.W.51 is residing very close to the house of P.W.10. On 21.3.1993 he saw Rajakannu in the bus stand and he asked him a sum of Rs.10/-. He gave him some money. Ex.P.3 series photographs do not relate to Rajakannu. He admits his signature in the statement recorded by P.W.41 and that signature is marked as Ex.P.50. Since he did not support the prosecution case, he was treated as hostile. However he admits that Ex.P.37 is the statement given by him to A.5. P.W.52 during the relevant time was the police constable in Kammapuram Police Station. However he would only state that when he returned to the police station for duty, he was informed that the person brought for interrogation escaped. Since he did not support the prosecution case, he was treated as hostile. He admits that there is an entry on 20.3.1993 in the general diary. But however he disowns any knowledge as to who made that entry. He would admit before he came to be treated as hostile that he had taken P.W.7 and Govindaraju,since deceased for remand before remand court. Ex.P.52

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is the endorsement made by him in that regard. P.W.53 is having a lathe at Kammapuram. He would state that his signature was taken by the station writer of Kammapuram Police Station in a record that Rajakannu had escaped. He was examined by A.2, a few days later. He would also state that he did not tell during investigation that he saw a person in the age group of 50 coming out of the police station and proceeding towards Indian Bank, wearing a dhoti. He had signed in the statement prepared in the office of P.W.41. Ex.P.53 is his signature. P.W.54 was the Head Constable in the Special Branch (Investigation) at Vridhachalam. Subramaniam/A.4 was the Sub Inspector of Police, Kammapuram Police Station at that time while A.5, Bashyam was the Inspector of Police in Kammapuram Police Station. He collects information discreetly and forwards it to the higher ups. According to his information Rajakannu, who was taken for interrogation to Kammapuram Police Station had escaped. Since he did not support the prosecution case on material aspects, he came to be treated as hostile. P.W.55 denied any knowledge about A.5 taking up the complaint registered for "man missing" at the instance of P.W.1 for investigation. But he admitted that P.W.10's complaint was investigated by A5. He deposed that he came to know that Rajakannu had escaped from the police station and since he did not support the prosecution case, he was treated as hostile. P.W.56 is having a shop at Neyveli. His father is a retired police constable. P.W.56 knows all the accused. His shop is opposite to Neyveli Police Station. A.5 examined him in the course of investigation and at that time he saw Rajakannu. However he does not remember the date and month in which he had seen Rajakannu. He would depose that the person shown in Ex.P.3 photographs is not the person whom he had seen. Ex.P.54 is his statement before P.W.41, the Revenue Divisional Officer. The rest of his evidence had no relevance to the crime in question. The investigating officer after completing all the legal formalities filed the final report in court on 9.11.1994 against the accused for the offences referred to earlier.

14. When the accused were questioned under Section 313 of the Code of Criminal Procedure, on the basis of the incriminating materials made available against each one of them, they denied each and every circumstance put up against them as false and contrary to facts. A.1 admitted bringing Rajakannu to the police station for interrogation. However he would deny the rest of the materials. A.2 to A.5 totally denied their involvement in the crime. A.6 would state at the end of his questioning as hereunder:-

> "I have not seen Rajakannu; I have not given him any treatment; the Inspector of Police, Bashyam (A.5) wanted me to give a certificate for having treated a person in the age group of 45; therefore I gave and I have been falsely implicated in this case."

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Mr.S.Ashok Kumar, learned Senior Counsel appearing for the convicted accused would contend that the conviction of A.3 under Section 326 I.P.C. cannot be legally sustained in the face of the medical evidence available on record. If the medical evidence is taken into account, then the possibility of P.W.7 sustaining a fracture even before the relevant period namely, 20.3.1993 to 22.3.1993 cannot be totally ruled out. The medical evidence also shows that the fracture is of a recent origin. Therefore the conviction of A.3 under Section 326 I.P.C cannot be legally sustained. As far as his conviction vis-a-vis P.W.7 under Sections 331 and 354 I.P.C. is concerned, learned Senior Counsel would contend that P.W.6 admitted that for the first time in court only i.e. almost seven years after the incident, she is disclosing that her modesty was attempted to be outraged. When P.W.6 had not disclosed such an act on the part of A.3 at any stage prior to her giving evidence in court, this court can easily, disbelieving the evidence of P.W.6 in regard thereto, consider acquitting A.3 under Section 354 I.P.C. also. As far as A.3's conviction under Section 331 I.P.C. is concerned vis-a-vis P.W.7, learned counsel would contend that from the evidence available on record namely, from the evidence of P.W.6 and P.W.7, it is clear that when P.W.7 was examined, Rajakannu was already there in the police station in his company and therefore when the main suspect was very much available in the police station for interrogation, there could have been no need for A.3 to cause hurt to P.W.7 to extort a confession from him to disclose some materials leading to the detection of a crime. Therefore it is argued that A.3's conviction under Section 331 I.P.C. also should go. As far as the conviction of A.1 and A.2 under Section 324 read with 34 I.P.C. for causing hurt to P.W.7, learned Senior Counsel would argue that the medical evidence available on record in this context centers around the fracture shown to have been suffered by P.W.7, which act was attributed only to A.3 and if A.3 is going to be acquitted of that offence then, in the absence of any other injury on the person of P.W.7, which could be the result of any overt act that could not be attributed to A.1 and A.2, their conviction under that head also must be set aside. It is then argued by the learned Senior Counsel in attacking the conviction of A.1 and A.2 under Section 302 read with 34 I.P.C., by taking us through the entire evidence on record and pointing that Rajakannu, in a hale and healthy condition, escaped from the police custody; the witnesses have deposed that Ex.P.3 series photographs do not relate to Rajakannu and therefore the materials available in Crime No.167 of 1993 on the file of Meensurrity Police Station and collected by the investigating officer would not lead this court to conclude that the person found dead in that crime number is Rajakannu, who was beaten to death, according to the State, in the investigating police station; P.W.1 was very hesitant to identify her husband initially though, later on, she identified P3 as her husband's photographs; there are several suspicious circumstances in the evidence of the kith and kin of Rajakannu in identifying Rajakannu as the person photographed in

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Ex.P.3 series; a crime had been registered in the context of Rajakannu escaping from the police station as a "man missing" case; the dead body was not available for being identified by any of the witnesses and therefore the conviction of A.1 and A.2 under Section 302 read with Section 34 I.P.C. cannot be on any legal evidence. The fact that Rajakannu is not to be seen would not necessarily mean that he was done to death in the police station. Even assuming that the prosecution had established the involvement of A.1 and A.2 in causing hurt to Rajakannu, which ultimately proved fatal, yet, the offence under Section 302 I.P.C. could not be made out, since it is shown that only in the course of the discharge of their duties, A.1 and A.2, at the best, could have used the required minimum force on Rajakannu. As far as the conviction of A.1 and A.2 under Sections 342 and 348 I.P.C. is concerned, learned Senior Counsel would contend that the evidence of P.Ws.1,3,4,5,6,7 and 8 did not lend support for a conviction. If A.1 could not be convicted under Section 330 I.P.C. for putting pressure on P.W.7 for the reasons already stated, A.1 and A.2 cannot be again convicted for the very same act perpetrated by them against P.W.7 under Section 330 read with 34 I.P.C. There is no evidence to show that the deceased was put to harm in extorting confession from him by A.1 and there is no legal evidence to show that A.1 had caused any hurt to the deceased. Therefore the conviction of A.1 under Section 330 and 324 I.P.C. cannot be legally sustained. Again for the conviction of A.1 and A.2 under Section 201 read with 34 I.P.C. there is no legal evidence. As far as the conviction of A.1 under Section 220 (9 counts) I.P.C., there is no legal evidence to connect him. For the conviction of A.1 under Section 218 I.P.C. also, learned Senior Counsel would contend that there is no legal evidence. As far as the appeal against acquittal is concerned, namely, A.6's acquittal, learned Senior Counsel would contend that, assuming the entire evidence in that regard is true, even then the offence under Sections 201 and 465 I.P.C. is not made out. By taking us through Sections 463 and 464 of the Indian Penal Code, learned Senior Counsel would contend that the certificate issued in this case is admitted by A.6 as having been issued by him; he admits his signature in it and of course A.6 had given a false statement in that certificate. To make out an offence under Section 465 of the Indian Penal Code, the State must show that the person accused of the offence made others to believe that the said document is signed by a person or by his authority knowing full well that the said person had not signed or none had signed under the authority of the said person. This is totally lacking in this case and therefore though the acquittal of A.6 is based on other grounds, yet, this court on the true scope of Section 465 of the Indian Penal Code can still maintain the acquittal of A.6. The acquittal of A.6 under Section 201 I.P.C. is also based on sound legal principles, since the materials on record do not show that A.6 knew, when he issued the certificate, that an offence had been committed or he has reason to believe that an offence had been committed. If this is wanting,

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then A.6 cannot be legally convicted.

15. Mr.N.R.Elango, learned Additional Public Prosecutor defending the State would contend, by taking us through the medical evidence available on record, that P.W.7 had definitely sustained a fracture. The evidence of P.Ws.6,7 and 8 show that P.W.7 was the subject matter of assault in the police station by the police personnel. Therefore, the conviction of P.W.7 under section 326 I.P.C is supported by legal evidence. As far as the conviction of A.1 and A.2 under Section 324 read with 34 I.P.C. for causing hurt to P.W.7, learned Additional Public Prosecutor would argue that the evidence of P.W.7 by itself establishes the offence beyond doubt and his evidence is corroborated by the oral evidence of P.Ws.6 and 8. Absence of any hurt other than the fracture noticed, cannot be taken serious note of in this case because P.W.7 came to be medically examined almost a year later after the incident and therefore there is every possibility of the symptoms of the injury getting vanished. To maintain the conviction of A.1 and A.2 under Section 302 read with 34 I.P.C., learned Additional Public Prosecutor would argue that there is overwhelming evidence namely, the evidence of P.Ws.1,3 to 8 which establishes beyond doubt that Rajakannu was brought to the police station for interrogation; P.W.1's evidence is there to show that Rajakannu was the subject matter of brutal attack by the police and the accused themselves namely, A.1 had admitted that Rajakannu was brought to the police station for interrogation and there is evidence namely, the evidence of P.W.1 to show that A.1 and A.2 attacked Rajakannu. The police have established that the dead body concerned in Crime No.167 of 1993 on the file of Meensurrity Police Station as the dead body of Rajakannu by examining his kith and kin. P.W.1 had seen her husband being beaten black and blue on 22.3.1993 and her evidence also shows that when she left, her husband was in a precarious condition. Therefore the defence version that Rajakannu had made good his escape is highly improbable. When it is shown that Rajakannu died due to a cause other than the natural cause and the close proximity between the time at which the dead body was noticed and the time at which Rajakannu is shown to have escaped from the police station clearly connects A.1 and A.2 as the persons responsible for the death of Rajakannu. P.W.1's evidence shows that her husband was naked in the police station when he was beaten brutally and in Crime No.167 of 1993 on the file of Meensurrity Police Station a naked dead body was found on the road. So the evidence of P.W.1 gets corroboration from the above materials noted in Crime No.167 of 1993. Though in Meensurrity Police Station on the dead body being noticed, a Crime under Section 304-A came to be registered, which ultimately stood closed as "undetected", yet, from the nature of the injuries found in the post mortem report prepared at the time when post-mortem was done on the dead body in that crime number, it could be easily seen that those injuries could not have been caused in a road traffic accident. Learned Additional Public Prosecutor would then contend

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that there is legal evidence to convict A.1 to A.3 for the other offences. As far as the acquittal of A.6 is concerned, learned Additional Public Prosecutor would argue that when A.6 had admitted that he had given a certificate which is false to his knowledge, the ingredients of Section 465 I.P.C. are clearly made out. When we entertained a doubt in open court as to whether the act of A.6 issuing the false certificate, assuming it stands established, could be brought within the purview of Section 464 I.P.C. namely, preparing a false document in the context of the arguments advanced by the learned Senior Counsel as extracted above, learned Additional Public Prosecutor took pains to take us through Section 464; Explanation 1 and illustrations therein, in particular reference to (d) and (e) to contend that the act of A.6 in issuing a certificate which is false to his knowledge, definitely brings home his guilt.

16. Having regard to the submissions made by the learned Senior Counsel for the appellants and the acquitted accused and the learned counsel appearing for the State, we proceeded to analyse the materials on record. We have already referred to the details of the conviction rendered by the Court of Sessions against the acquitted accused. In sum and substance, the prosecution case is that in the course of investigating the crime based on the complaint given by P.W.10, in the very same investigating police station, A.1 and A.2 brought P.Ws.1,3,4 and 5 at the first instance to the police station; detained them illegally; caused hurt to them to extort a confession/information from them leading to the detection of the crime based on the complaint given by P.W.10. It is the further case of the prosecution that in the course of adopting such third degree methods, P.Ws.6,7 and 8 were also brought to the police station and while trying to extort a confession from P.Ws.6,7 and 8, the modesty of P.W.6 was attempted to be outraged. It is the further case of the prosecution that while such modus operandi was in operation, Rajakannu, since deceased was also secured and brought to the police station where he was also beaten to death and with an attempt to screen the evidence of the offence, false records were created in the police station and the dead body was thrown in a different place to make it appear as though the police personnel put up for trial had nothing what so ever in the death of Rajakannu. In deciding whether the prosecution had established their case we have to necessarily analyse the prosecution case in the following seriatim.

> "The evidence of P.Ws.1,3,4 and 5 in the context of they along with Govindaraju (dead) being taken to the police station first for the purposes referred to earlier, which is known to P.Ws.17 and 24; the evidence of P.Ws.6,7 and 8 that they were taken to the police station for interrogation; the evidence of P.Ws.17 and 24 that Rajakannu had been secured and on the information given by them, the investigating police

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personnel had taken him to the police station; on the arrival of Rajakannu in the police station, the police personnel allowing P.Ws.1,3,4 and 5 to go home; P.Ws.6,7 and 8 tortured in the police station with a view to extort a confession from them; P.W.1 bringing cooked food to the police station on 22.3.1993 and serving food to her husband, P.W.6 and Govindaraju (dead); P.W.6 witnessing further assault on Rajakannu, since deceased and P.W.7 deposing that on the mid-night of 22.3.1993, a van was brought to the police station, in which the dead body of Rajakannu was taken for screening the offence. "

We make it clear that in analysing the prosecution case in the above seriatim, we will also have to look into the evidence of P.W.16, the driver of the van, which is utilised for taking P.Ws.1,3,4,5 and Govindaraju to the police station; the evidence of P.Ws.17 and 24 to show that they saw the police taking P.Ws.1,3,4 and 5 to the police station and also to show that on 22.3.1993 at about 4.00 p.m. the police informing the villagers that Rajakannu had made good his escape; the evidence of P.W.25 along with the other witnesses that they went to the police station itself on 22.3.1993 to question the police in the context of the non availability of Rajakannu and the evidence of witnesses deposing about the complaint given by P.W.8 and the dead body being found within the jurisdiction of Meensurrity Police Station.

17. P.W.10 is a resident of Gopalapuram within the jurisdiction of Kammapuram Police Station/the investigating police station. He lodged the complaint/Ex.P.7 in Kammapuram Police Station alleging theft of large volume of jewellery from his house. A.1 to A.3, who are the police personnel in the investigating police station do not dispute the complaint given by P.W.10. Law on Ex.P.7 was set on motion. Investigation commenced by A.1,A.2 and other police personnel going in search of the suspected accused. P.W.16 is the driver of the van with Registration No.TNF.1269. P.W.42 is P.W.16's the employer. He would state that in the month of March, 1993 his van was taken on hire by the police and P.W.16 was the driver of the van. The van was hired by the police/investigating police station for two days. M.O.2 is the said van and Ex.P.54 is the Mahazar under which the van was recovered. P.W.16 in his evidence would state that in his van A.1 (identified by him in court) travelled along with police personnel. His evidence shows that the police reached the house of Rajakannu - suspected accused on the complaint given by P.W.10 and the police did not find Rajakannu there. As a result thereof - P.W.16 would state that P.Ws.1,2 and others were taken in the van and enroute in a Mill another person was taken and all of them reached the investigating police station. The person picked up from the Mill is Govindaraju and he died even before the commencement of the trial. P.W.16's

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evidence also shows that after taking P.Ws.1,2 and others and the person from the Mill, the same van was utilised for taking two or three more persons to the police station. P.W.17 is a local resident, who would also state that A.1 alighted from the van opposite to the house of P.W.1 and questioned the whereabouts of P.W.1's husband. When she answered that her husband had gone out for work, the police took P.W.1; her children, P.Ws.4 and 5 and P.W.3 in their van. When they were in the van, police was making a random enquiry in the village asking them as to whether any of them had seen Rajakannu, since deceased. When P.W.17 asked him as to why the police are asking about the whereabouts of Rajakannu, the police answered that a theft had taken place two days prior to that day and the police is suspecting the involvement of Rajakannu. Then the police - according to P.W.17, left the village stating that if by any chance Rajakannu appears in the village, he should be secured and police should be accordingly informed. P.W.24 had given evidence more or less on the same lines as spoken to by P.W.17. Then we have the evidence of P.Ws.1,3,4 and 5, who would state that the police came in search of Rajakannu and in that course P.Ws.1,3,4 and 5 were taken to the police station, besides Govindaraju, since deceased, who was picked up from a nearly mill premises. P.Ws.4 and 5 are the children of P.W.1 and the deceased while P.W.3 is the elder brother of deceased Rajakannu. All of them uniformly say that after making a random enquiry here and there in the village, they were taken to the police station by A.1 and A.2. Though the above mentioned witnesses have been cross examined, yet, we do not find any reason to doubt the evidence of P.Ws.17 and 24 that they saw P.Ws.1,3,4 and 5 being taken in the police van by A.1 and A.2 and the evidence of P.Ws.1,3,4 and 5 that they were taken in the police van by A.1, A.2 and others to the police station in the context of the suspected involvement of Rajakannu on the complaint given by P.W.10. The evidence of P.W.16 lends full support to the evidence of the above witnesses. The evidence of P.Ws.1,3,4 and 5 also show beyond doubt that all of them were kept in the police station and then allowed to go home only at about 4.00 p.m. or so on 21.3.1993. P.Ws.6 and 7 have given evidence in total corroboration to the oral evidence of P.Ws.1,3,4 and 5 as to when they were sent out of the police station namely, on 21.3.1993. Therefore we conclude at this stage that P.Ws.1,3,4 and 5, who have been taken from the village on 20.3.1993, were in the illegal custody of the police in the police station and they were allowed to go home only at about 4.00 p.m. or so on 21.3.1993.

18. Let us now analyse the evidence of P.Ws.1,3,4 and 5 as to how they came to be treated by the police from the time they came into their custody. Since all the accused have been acquitted of the offence under Section 330 I.P.C. vis-a-vis P.Ws.1,3,4,5,6 and 8 are concerned, we are of the considered opinion that we need not dwell much upon that part of the prosecution case. While focussing our attention to the prosecution case, we want to remind ourselves

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at this stage about the details of the conviction of the various accused and they are as hereunder:-

"342 I.P.C. (9 counts)	- A.1 and A.2
348 I.P.C. (9 counts)	- A.1 and A.2
330 and 326 I.P.C. vis-a-vis P.W.7	- A.1
331 and 326 I.P.C. vis-a-vis P.W.7	- A.3
330 read with 34 I.P.C. vis-a-vis P.W.7	- A.1 and A.2
324 read with 34 I.P.C.vis-a-vis P.W.7	- A.1 and A.2
354 I.P.C. vis-a-vis P.W.6	- A.3
330 and 324 I.P.C. vis-a-vis the deceased	- A.1
302 r/w 120-b r/w 34 I.P.C. & 201 r/w 34 I.P.C.	- A.1 and A.2
220 I.P.C. (9 counts) and 218 I.P.C.	A.1
201 read with 34 I.P.C.	- A.2
217 and 218 I.P.C.	- A.2"

As far as the conviction of A.1 and A.2 under Section 342 I.P.C. (9 counts) and 348 I.P.C. (9 counts) are concerned, we find that the evidence of P.Ws.1,3,4,5,6,7 and 8 do prima facie establish without any doubt that each one of them has been wrongfully confined with a view to extort a confession from them. On going through their evidence we find that their entire evidence is trustworthy and therefore we are unable to disbelieve them. Their evidence also shows that the deceased was also wrongfully confined. Govindaraju - one of the persons, who is shown to have been wrongfully confined to extort a confession, had died even before the trial. The evidence of P.W.16 coupled with the evidence of P.Ws.17 and 24 clinchingly prove beyond doubt that P.Ws.1,3,4,5 and another person from the Mill were taken in the van by A.1 and A.2 to the police station. P.Ws.1,3,4 and 5 say that the other person is Govindaraju. P.Ws.6,7 and 8 by their evidence proved beyond doubt that they were also confined in the police station. P.Ws.1,3 and 5 lend full support to the evidence of P.Ws.6,7 and 8 as referred to above. The evidence of P.Ws.1,3,4,5,6,7,8 also proved beyond doubt that at 4.00 p.m, on 21.3.1993 Rajakannu, since deceased was brought to the police station. Therefore we hold that the evidence of P.Ws.1,3 to 8 establish the wrongful confinement of those seven witnesses besides Govindaraju and Rajakannu for the purpose of extorting a confession from them. Therefore we are not inclined to interfere with the conviction of A.1 and A.2 under Section 342 I.P.C. (9 counts) and 348 I.P.C. (9 counts).

19. We now examine the conviction of A.1 under Sections 330 and 324 I.P.C. vis-a-vis P.W.7. To attract section 330 of the Indian Penal Code, the prosecution must establish that a person accused of that offence should voluntarily cause hurt to the sufferer (P.W.7) for extracting from him a confession or any information leading to the detection of the crime. In going through the evidence of P.W.7 in this context, we may also refer to the conviction of A.3 under Sections 331 and 326 I.P.C. vis-a-vis P.W.7 and the conviction of

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A.1 and A.2 under Sections 330 read with 34 I.P.C. and 324 read with 34 I.P.C. vis-a-vis P.W.7. In other words, the entire prosecution case for the above referred to offences against A.1 to A.3 could be conveniently discussed as one issue. To attract Section 331 I.P.C. the person accused of the crime should have caused grievous hurt to the sufferer for the purpose of extorting a confession or any information leading to the detection of a crime. According to the prosecution, A.3 had caused a fracture to P.W.7. Let us now examine whether the prosecution had proved that P.W.7 had suffered any fracture. According to P.W.7's evidence he was taken to the police station on 21.3.1993 and in the police station A.1, A.2 and other two police personnel (he identifies A.1 to A.3 in court) tied up P.W.7; Rajakannu, since deceased and Govindaraju (a witness - since deceased) in a room and beat them with lathi. Therefore the prosecution case is that P.W.7 had suffered a grievous hurt only in the manner referred to above. It must be noticed here that P.Ws.6,7 and 8 were taken together in the van from the village. P.W.6's evidence is that when all the three namely, P.Ws.6,7 and 8 were on their way to the police station in the van A.1 and A.2 beat each one of them with lathi. Her evidence does not show that in the police station also P.Ws.6 to 8 were beaten. It must be noticed that P.W.6 does not mention about the presence of A.3 in the van in which the witnesses were travelling from their village Pandanallur to the police station. P.W.8 would state that when he and P.Ws.6 and 7 were on their way from Pandanallur Village to the investigating police station, all of them were beaten. He would state that the persons, who assaulted them are in the court and they are A.1 to A.3. He affirmed that through out their journey from their village to the police station, all the three were beaten continuously. Therefore the evidence of P.Ws.6 to 8 show that when they were on their way from the village to the police station, they were assaulted and P.W.7's evidence is that even in the police station, he was assaulted. The evidence of P.W.6 eliminates the presence of A.3 in the van when the witnesses were taken from Pandanallur Village to the police station, while P.Ws.7 and 8 would state that A.3 was also a part of the said police team. Having regard to the two sets of evidence, one, namely, the evidence of P.W.6 not incriminating against A.3 and the other evidence of P.Ws.7 and 8, which are incriminating against A.3, we are inclined to give the benefit of the evidence of P.W.6 to A.3, so far as the overt act attributed to him in beating the witnesses in extorting a confession. In fact, according to the evidence of P.W.6, police were attempting to extort a confession only when they were on their way from the village to the police station. P.Ws.7 and 8 do not even whisper that either enroute or even in the police station, the police to extort a confession from the witnesses, assaulted them.

20. Now let us find out whether P.W.7 had suffered any fracture. To decide this, we have the evidence of P.Ws.43 to 45 and P.W.47 with Ex.P.55, the Accident Register. P.W.43 is a private

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Medical Practitioner. His evidence shows that seven years before he gave evidence in court, P.W.7 appeared before him with his right forehand bandaged and when questioned P.W.7 told him that he was taking native treatment for the fracture. To relieve him of the pain and to reduce the swelling P.W.43 prescribed some medicine and gave him an injection. P.W.43 do not claim that he is acquainted with P.W.7. No test identification parade was conducted to enable P.W.43 to identify P.W.7 as the person, who appeared before him, as spoken to by him. P.W.43 had identified P.W.7 for the first time only in court. Under these circumstances, we are unable to place any reliance on the evidence of P.W.43 as referred to above. P.W.44 is the Doctor in the Government Hospital at Tanjore. P.W.7 was brought before him on 19.5.1994 with a police medical memo for injuries shown to have been sustained by him on 21.3.1993 at the hands of A.1 and A.2. Even at this stage, we want to note down that this evidence of P.W.44 eliminates the role of A.3 in causing any injury to P.W.7, as otherwise, the police, who had started investigating the crime, would not have failed to inform P.W.44 that besides A.1 and A.2, another police personnel was also involved in causing grievous hurt to this witness. P.W.44 treated P.W.7. Since P.W.44's examination on P.W.7 is supported by contemporaneous record prepared by him at that time namely, Ex.P.55, we are not inclined to doubt the evidence of P.W.44 that on 19.5.1994 he examined P.W.7 brought before him by the police personnel for injuries shown to have been sustained by him on 21.3.1993 at the hands of A.1 and A.2. P.W.45 is another Civil Surgeon in the Govenment Hosptial at Tanjore during the relevant time. He had taken x-rays on P.W.7 when he was referred to him on 19.5.1994. He found a fracture of the right hand fore arm - fracture of ulna. He issued Ex.P.57, his opinion. M.Os.3 and 4 are the x-rays of the hand and foot. The evidence of P.Ws.44, 45 and 47 do show that P.W.7 had suffered a fracture. The question is, at what point of time P.W.7 had suffered the fracture. P.W.44 in his evidence in court had stated that any assault followed by a swelling would have touch pain for a period of four weeks or six weeks only and when he examined P.W.7, he noticed a swelling and touch pain on his right hand. According to him, such symptoms would have occurred on P.W.7 about six weeks prior to his examination. P.W.45 had deposed in his evidence in cross that P.W.7 had suffered a simple fracture and the fractured bones would unite within six weeks from the date on which the fracture had occurred. He had also stated that the fracture he detected on P.W.7's hand could have occurred within a period of six weeks before the day he took x-rays. P.W.45 in his evidence in chief would state that the fracture would have occurred at any time between six months and eighteen months prior to his examination. Therefore from the evidence of these medical experts it is not possible to fix with any amount of certainty that P.W.7 would have suffered a fracture only on 21.3.1993 (Doctors examined him on 19.5.1994). In other words, the possibility of P.W.7 suffering a fracture prior to 21.3.1993 cannot be totally eliminated. But at the same time it must be held

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that the evidence of P.W.7 establishes beyond doubt that A.3 assaulted him in the police station. We see no reason at all to disbelieve the evidence of P.W.7 that he was beaten in the police station by A.3. In view of our discussion we conclude, giving the benefit of the evidence of the medical experts, that the prosecution had failed to establish that A.3 caused a grievous hurt to P.W.7 in the police station. Accordingly A.3 is acquitted of the offence under Section 326 I.P.C. However accepting the evidence of P.W.7 that A.3 attacked him, we bring the act of A.3 into one under Section 323 I.P.C. A.1 and A.2 for causing injury on P.W.7 stand convicted under Section 324 read with 34 I.P.C. They are also shown to have beat his hand only with lathi and there is no evidence to show that they attacked on of P.W.7 on any other part of his body. Under these circumstances, we are inclined to alter the conviction A.1 and A.2 also under Section 323 read with 34 I.P.C., on the evidence of P.W.7 that in the police station A.1 and A.2 also attacked him with lathi. As far as A.3's conviction under Section 331 I.P.C. is concerned, since we have held that the prosecution had not established that A.3 has caused grievous hurt to P.W.7, he is acquitted of the offence under Section 331 I.P.C.

21. A.1 also stands convicted under Section 324 I.P.C. for causing hurt to P.W.7. This charge is with reference to the attack perpetrated on P.W.7, while P.W.7 in the company of P.Ws.6 and 8 was brought to the police station. For sustaining this charge, we have the evidence of P.Ws.6,7 and 8. No material worth mentioning had been elicited from their evidence to disbelieve them. But however, having regard to the reasons stated by us in acquitting A.1 and A.2 under Section 324 read with 34 I.P.C., we are inclined to set aside the conviction of A.1 under Section 324 I.P.C. and instead hold him guilty under Section 323 I.P.C. A.1 also stands convicted under Section 330 I.P.C. vis-a-vis attempting to extort a confession from P.W.7. The evidence of P.W.7 establishes that offence. Accordingly, the conviction of A.1 under Section 330 I.P.C. is sustained. The conviction of A.1 and A.2 under Section 330 read with 34 I.P.C. vis-a-vis-a-vis P.W.7 - attempting to extort a confession from P.W.7 is supported by the evidence of P.W.7 himself. It is seen from the evidence that P.W.7 was assaulted in the van on the way to the Police Station as well as in the Police Station to extort a confession. Since we find no reason to disbelieve the evidence of P.W.7 in this regard, the conviction of A.1 and A.2 under Section 330 read with 34 I.P.C. is sustained. A.3 stands convicted under Section 354 I.P.C. For sustaining this conviction, the prosecution relies upon the evidence of P.Ws.6 and 8. Their evidence is P.W.8 was tied to a window and was beaten; P.W.6 was brought inside the police station and then untying P.W.8 and undressing P.W.6, P.W.8 was asked to outrage the modesty of P.W.6. P.W.6 in her evidence had categorically admitted that for the first time only in court she is giving such evidence. Having regard to that evidence, we are of the opinion that the prosecution had not established the involvement

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of A.3 under Section 354 I.P.C. and accordingly he is acquitted of the offence under Section 354 I.P.C. As far as A.1's conviction under Section 330 I.P.C. vis-a-vis extorting a confession from Rajakannu, since deceased and causing injury to him with lathi, we are of the opinion that on the evidence available on record, which we have already extracted, the conviction of A.1 under Section 330 I.P.C. can be legally sustained and accordingly it is sustained. A1 stands convicted under Section 324 I.P.C. for causing hurt to Rajakannu, since deceased and along with A.2 under Section 302 r/w 120-B r/w 34 I.P.C., for causing the death of Rajakannu. In view of the death of Rajakannu in the Police Station, the charge under Section 324 I.P.C., against A.1 vis-a-vis the deceased do not survive. Accordingly A1 is acquitted of the above offence.

22. We now go to the main prosecution case namely, the conviction of A.1 and A.2 under Section 302 read with 120-B r/w 34 I.P.C. To decide the prosecution case, we have the evidence of P.Ws.1,3,4 and 5 to start with, who have stated that Rajakannu was brought to the police station at about 4.00 p.m. on 21.3.1993. P.Ws.6 to 8 had corroborated this evidence. Then we have the evidence of P.W.1 witnessing the assault on her husband on 22.3.1993, which is also witnessed by P.W.7. Therefore the main issue falling under Section 302 read with 120-B r/w 34 I.P.C. had to be decided only in the context of the evidence of P.W.1 and P.W.7, since they only saw the brutal attack of Rajakannu, since deceased. P.W.7's evidence also shows that on 21.3.1993 also Rajakannu was beaten in the police station by A1 to A3. We have already extracted the evidence of P.W.1, which undoubtedly establishes beyond doubt that her husband was beaten black and blue by A.1 and A.2 in the police station on the morning of 22.3.1993 when she took food for her husband. Rajakannu, since deceased was in the police station on 21.3.1993 itself and this is the statement not only by P.Ws.1,3,4 and 5 but also by P.W.6 and others. It must be noticed that on Rajakannu being taken to the police station at 4.00 p.m. on 21.3.1993 , the police allowed P.Ws.1,3,4 and 5 to go home. The evidence of P.W.7 shows that even on 21.3.1993 Rajakannu, P.W.7 and Govindaraju were beaten by A.1 and others in the police station. P.W.7's evidence is that in the course of that day namely, on 21.3.1993, P.Ws.6 and 8 were allowed to go back to their village and therefore P.W.7 alone was in the police station along with Govindaraju. His evidence shows that on the next day, P.W.1 brought food, which she served to PW.7, Govindaraju (since deceased) and Rajakannu. (the suspected accused since deceased). Rajakannu after taking three or four mouthful of food could not take food thereafter and he vomited. Even at that time A.1 kicked him finding fault with Rajakannu that he is acting and immediately Rajakannu became unconscious. Then Rajakannu was taken with the support in the armpit to A.1's room where A.1 and two other police personnel had kicked him again. P.W.1 in her evidence would state that when she carried food to her husband in the police station - on

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22.3.1993, she saw her husband tied to a window, completely undressed and being assaulted with lathi. She also found bleeding injuries on her husband. A.1 and A.2 giving shoulder support moved Rajakannu slowly to the thatched shed outside the police station. At that stage, P.W.1 served food to her husband, P.W.7 and Govindaraju. However her husband could not swallow the food after taking three or four mouthful of food and he vomited. At that stage also A.1 and A.2 did not spare her husband and fisted him on both sides of his flank declaring that he is only acting. Her evidence shows that P.W.9, the medical practitioner was brought to the police station and besides giving some tablets, P.W.9 also gave some ointment to be applied to the wounds on the body of her husband, which she did. P.W.9 deposed that in the police station he treated two people. Then A.1 and A.2 holding the tuft of her husband's hair dragged him to the room and there also A.2 kicked on her husband's body repeatedly. Her evidence shows that she found her husband not breathing and somebody in the police station poured water in his mouth, which could not get in. At that stage, A.1 asked her to go home and she left. Therefore the evidence of P.Ws.1 and 7 establishes beyond doubt that Rajakannu, since deceased was brutally attacked by A.1 and A.2 in the police station and P.W.1's evidence is that her husband was in a precarious condition even at that stage and according to her, her husband was not in a position to move.

23. Then we have the evidence of P.Ws.17 and 24. According to their evidence, by 4.30 p.m. or so on 22.3.1993 A.1 and others came in the police van to the village and made it appear as though Rajakannu had escaped from the police station on that evening and therefore telling them that if by any chance they come across him, they must secure him and inform the police, they left. Parvathy/P.W.1 arrived at the village at about 6.00 p.m. and she was informed by P.Ws.17 and 24 as to what the police told him the earlier evening, for which P.W.1 expressed her shock stating that having regard to the condition at which her husband was found to be, when she left the police station, it is not possible for her husband to escape. This made P.Ws.17,24,25 and other villagers to go to the police station to enquire about what exactly happened in the police station and the station writer was evasive in his answer. He advised them to wait for the Sub Inspector of Police. Enroute they found a van, in which A.1 was travelling. When A.1 was asked, he also very lightheartedly said that Rajakannu had escaped from the police station. In this context we go back to the evidence of the investigating officer of Meensurrity Police Station, which we have already referred to. His evidence shows that his village menial gave a complaint to him on seeing the dead body in a public place and accordingly he registered the case under Section 304A I.P.C. and ultimately after post-mortem and after complying with all the legal formalities that crime was closed as "undetected". Fortunately for the prosecution, the investigating officer in that case, before

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closing that investigation, had caused the dead body in that crime number to be photographed and that those photographs are Ex.P.3 series. In this context, we also note that a number of witnesses have been examined in the crime registered in Meensurrity Police Station to show that they observed the dead body in a public place. All those witnesses examined in the present case as to whether the dead body found by them in the public road is the dead body found photographed in Ex.P.3 series, all of them answered in the affirmative. The photographs were shown to P.Ws.1,3,5,6,7 and 8 besides P.Ws.17 and 24, who also affirmed that Ex.P.3 series photographs relate to Rajakannu, since deceased. It must be noticed that after closing the crime by the investigating officer in Meensurrity police station as "undetected", the dead body appears to have been disposed off and therefore corpus delicti is not available in the present case for being identified. Having regard to the overwhelming evidence available in this case, we have no doubt at all that the prosecution in the present case had established that Ex.P.3 photographs relate to Rajakannu, since deceased. The medical evidence available on record (we have already referred to) do show that Rajakannu died due to homicidal violence. The evidence of P.W.1 and P.W.7 show that Rajakannu was attacked in the police station. It is seen from the materials available in the crime registered on the file of Meensurrity Police Station that the dead body was found naked in the road. In the present case on hand P.W.1 in her evidence would state that on 22.3.1993 when she went to the police station taking food for her husband, she found her husband tied to a window fully naked. Therefore this is another material in the nature of corroboration to show that the dead body found in the crime registered in Meensurrity Police Station is the dead body concerned in the present case. Therefore we accept the prosecution case that the dead body concerned in Meensurrity Police Station is the dead body of Rajakannu, whose wife is P.W.1.

24. The defence is not disputing that Rajakannu was in the police station. Their case is that while in police custody, Rajakannu escaped. Therefore a duty is cast upon the defence to establish atleast by probabilities as to how Rajakannu could have escaped. The evidence of P.W.1 completely eliminates the possibility of Rajakannu escaping on his own. In addition to the above, we have the direct evidence of P.W.7 which had not been shaken at all in the cross examination. His evidence is that on the mid-night of 22.3.1993, a van was brought to the police station in which Rajakannu was taken. His evidence also shows that P.W.7 and Govindaraju (witness - since deceased) were also taken to Vridhachalam. In fact we find that except cross examination of P.W.7 on the grievous hurt stated to have been caused to him, no cross examination at all had been done on his evidence that on the mid-night of 22.3.1993, the police in the van had taken the dead body of Rajakannu from the police station. Therefore the evidence of P.Ws.1 and 7 establish beyond doubt that Rajakannu definitely met his end

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in the police station itself after the brutal attack on him by A.1 and A.2. The consistent case of the prosecution is that, A.1 and A.2 at all times beat Rajakannu and continued to beat him till he breathed his last in the police station. Under these circumstances, we have no hesitation at all to conclude that the conviction of A.1 and A.2 under Section 302 read with 34 I.P.C. stands established and accordingly the said conviction is confirmed. However we find that though the charge against A.1 and A.2 is only under Sections 302 read with 34 I.P.C, we find that the conviction is under Section 302 read with 120-B read with 34 I.P.C. There is no evidence for conspiracy at all. Accordingly, we upheld the conviction of A.1 and A.2 under Section 302 read with 34 I.P.C. only. A.1 and A.2 transporting the dead body in the mid-night of 22.3.1993 as spoken to by P.W.7 is supported by legal evidence and accordingly their conviction under Section 201 read with 34 I.P.C. is also confirmed. A.1 stands convicted under Sections 220 I.P.C. (9 counts) and 218 I.P.C. Section 220 I.P.C. speaks about the persons having legal authority to commit persons for trial or to confinement. maliciously commits them to confinement or keeps them in confinement, knowing that he is acting contrary to law. The evidence of P.Ws.1, 3 to 8 show that besides those seven persons, the deceased Rajakannu and Govindaraju were wrongfully confined. A.1 had made entry in the general diary as though P.W.7 and Govindaraju were found moving in suspicious circumstances enabling him to arrest under Section 41(3) of the Code of Criminal Procedure and on the basis of that he sent them for judicial remand. However the Magistrate refused to accept them for remand. P.W.7's evidence establishes the above material against A.1. Therefore the conviction of A.1 under Section 218 I.P.C. is also based on legal evidence. Accordingly the conviction of A.1 under Sections 220 I.P.C. (9 counts) and 218 I.P.C. stands confirmed.

25. P.W.56 would state in his evidence that Rajakannu met him on the night of 22.3.1993 and told him that the police allowed him to go and that he was coming from the investigating police station. P.W.56 also said that he gave him some money to Rajakannu as he wanted it. But however we find that his evidence is not worth acceptance. After seeing Ex.P.3 series photographs, P.W.56 states that it does not relate to the person whom he had seen. He claims to have seen Rajakannu in the year 1993. But however he does not remember the date and month in which he had seen him. Therefore his evidence that he met Rajakannu alone on that night and that Rajakannu informed him that the police had sent him after examination, is far from convincing. According to the prosecution, this witness had been set up by A.5 to speak in favour of the defence namely, Rajakannu was allowed to go from the police station hale and healthy. From the trend of evidence of this witness recorded, we find that at a particular stage he appears to have been treated as hostile and rightly so (though it is not specifically noted).

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26. In the light of our discussion and the materials noted by us as indicated above, the appeals are disposed of on the following lines:-

C.A.No.735 of 2004:-

The conviction of A.3 under Sections 331 I.P.C. and 326 I.P.C. is set aside and accordingly he is acquitted of the offences referred to above. Fine amount if any paid by A.3 for those above two offences shall be refunded to him. However A.3 instead of his conviction under Section 326 I.P.C, stands convicted under Section 323 I.P.C. This Court is informed that , A.3 was aged about 55 years in the year 2004 and he may be on the verge of superannuation now. Having regard to the above, we are of the opinion that instead of sentencing A.3 for the offence under Section 323 I.P.C., we are inclined to admonish him under Section 3 of the Probation of Offenders Act, since he is not shown to be involved in any other offence. A.3 is also acquitted of the offence under Section 354 I.P.C. and fine amount if any paid by him for that offence shall be refunded to him.

C.A.No.738 of 2004:-

The conviction of A.1 and A.2 under sections 342 I.P.C., 348 I.P.C, each nine counts and 330 I.P.C. read with 34 I.P.C are confirmed. The conviction of A.1 under Section 324 I.P.C. is set aside and instead he is found guilty under Section 323 I.P.C. and the sentence already imposed for the offence under Section 324 I.P.C. stands confirmed for this conviction. The conviction of A.1 and A.2 under Section 324 read with 34 I.P.C. is set aside and instead each one of them are found guilty under Section 323 read with 34 I.P.C. and the sentence already imposed on them for the offence for which they stand convicted is confirmed. The conviction of A.1 under Section 330 I.P.C. is confirmed. The conviction of A.1 under Section 324 I.P.C. is altered into one under Section 323 I.P.C. and the sentence already imposed on him for the offence under Section 324 I.P.C. is maintained for this conviction. The conviction and sentence imposed on A.1 and A.2 for offences under Section 302 read with 120-B read with 34 I.P.C. is set aside and instead they stand convicted under Sections 302 read with 34 I.P.C. Their conviction under Section 201 read with 34 I.P.C. is confirmed. The sentence already imposed on them for the above referred to offences is maintained. The conviction of A.1 under Sections 220 I.P.C.(9 counts) and 218 I.P.C. are confirmed.

The above two appeals filed by the accused stand disposed of on the above lines.

27. C.A.No.668 of 2005:-

In this appeal, the State is challenging the acquittal of A.6 of offences under sections 201 and 465 I.P.C. Ex.P.68 marked in S.C.No.150/1997 is Ex.P.75 in S.C.No.183/1995. The certificate reads as hereunder:

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"This is to certify that R.Rajakannu S/o.Rangan aged 50 years old of Mudhanai Village came to my Nursing Home at about 10.P.M on 22.03.1993 complaining of pain all over his body. I prescribed analgesic tablets and asked him to see me 2 days later. He paid me Rs.10/- as consultancy fees and gone away."

If this certificate is accepted as true, then the State's case that Rajakannu was done to death in the police station itself in the afternoon of 22.03.1993 would stand falsified. P.W.41 is the Revenue Divisional Officer, who conducted inquest over the dead body, before whom, A.6 appeared on his own and stated that as requested by the Inspector of Police - Bashyam (A5 in S.C.No.183/1995), he issued the certificate and that he had not seen the patient at all. A.6 admits having given the certificate, even when he was questioned under section 313 of the Code of Criminal Procedure. To make out an offence under Section 201 I.P.C., the Investigating Agency must show that A.6 knows or has reason to believe that an offence has been committed and caused any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment or with that intention gives any information respecting the offence which he knows or believes to be false. There is no legal evidence on record to show that on the day when A.6 gave the certificate as requested by A.5, either he knew that an offence had been committed or he had reason to believe that an offence had been committed. The materials available on record show that A.6 on approached by A.5 obliged him by giving the certificate. Therefore the acquittal of A.6 under section 201 I.P.C cannot be legally interfered with.

28. Now let us decide whether the prosecution had made out a case under Section 465 of the Indian Penal Code. Section 465 is the punishing section and it deals with forgery. Forgery is defined in Section 463 of the Indian Penal Code, which contemplates making any false documents or false electronic record etc. etc. with intent to cause damage or injury to the public etc.etc. Therefore to satisfy the ingredients of Section 463 of the Indian Penal Code, the prosecution must establish that A.6 in this case had made any false document. Section 464 of the Indian Penal Code speaks about "making a false document". Admittedly in this case A.6 had signed the certificate Ex.P.68 which is found to be false. The question to be decided is whether a mere signing of the said certificate would amount to A.6 "making a false document"? Section 464 contains three sub clauses. We have no doubt at all that "Secondly" and "Thirdly" of Section 464 of the Indian Penal Code do not get attracted to the

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case on hand. Under these circumstances, the present case against A.6 has to be decided only under "Firstly" of Section 464 of the Indian Penal Code. As noted earlier, in this case, admittedly A.6 had signed a document, namely, the certificate. But such signing as could be seen from "Firstly" of Section 464 of the Indian Penal Code must be with the intention of causing it to be believed that such document had been signed by the person, whose name is found in it. The opening expressions in "Firstly" of section 464 is "Who dishonestly or fraudulently". Section 24 of the Indian Penal Code defines "dishonestly" as meaning, "whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly". In the case on hand there is no evidence to show that by A.6 signing the said document somebody is forced to suffer a wrongful loss or someone had made a wrongful gain. Section 25 of the Indian Penal Code defines "fraudulently" as "a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise." As we noted earlier in this case, there is no evidence to show that A.6 knew or had knowledge that an offence is already committed on the day when he signed the certificate. If that is so his act of signing cannot be brought under Section 25 of the Indian Penal code and consequently under Section 464 of the Indian penal Code. For all the reasons stated above, we find that the acquittal of A.6 even under Section 465 I.P.C. can be legally sustained.

29. Learned Additional Public Prosecutor, in meeting this point, relied upon Explanation 1 to section 464 I.P.C, which states that "a man's signature of his own name may amount to forgery". This Explanation contains five illustrations. Learned Additional Public Prosecutor, by taking us through illustrations (d) and (e), in the context of Explanation 1, would argue that since A.6 had signed in the certificate, there is no escape for him to come out of the offence of forgery. We are afraid, we cannot agree with the submission made by the learned Additional Public Prosecutor. To apply illustrations (d) and (e), wrongful gain or wrongful loss must be shown to have arisen. This means, the illustrations referred to above would cover persons acting dishonestly. We have no doubt at all that illustrations (d) and (e) to Explanation 1 can be referable only to a person, who had acted dishonestly in making a false document. In the case on hand, neither wrongful gain nor wrongful loss is established. Therefore the case of the State against A6 must be considered viz., whether A.6 had fraudulently signed the certificate? There is no evidence to show that the second limb of section 464 I.P.C namely, A.6 signed the certificate with the intention of causing it to be believed that such document was signed by the person whose signature is found there or by the authority of that person. It is not the prosecution case that A.6 signed his name in the certificate to make it believe that another person

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having the same name had signed it. For all the reasons stated above, we find that the learned Trial Judge had not committed any illegality at all in acquitting A.6 and accordingly Crl.A.No.668 of 2005 stands dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Tr/

To:
1. The Additional District and Sessions Judge
   Fast Track Court No.III, Vridhachalam.

2. Do through The Principal Sessions Judge, Vridhachalam

3. The Judicial Magistrate, Vridhachalam.

4. -do- through the Chief Judicial Magistrate, Vridhachalam.

5. The District Collector, Vridhachalam.

6. The Director General of Police, Chennai.

7. The Public Prosecutor, High Court, Madras.

8. The Superintendent, Central Prison, Cuddalore

9. The Deputy Superintendent of Police
   CCIW (CID), Cuddalore, CBCID Madras
   Head Quarters.

2 ccs to Mrs. P.v. Rajeswari, Advocate, Sr. 60005

1 cc to Mr.C.D. Johnson, Advocate, Sr. 59681
2 ccs to Mr.R. Karunagaran, Advocate, Sr. 59704

Crl.A.Nos.735, 738 of 2004
& 668 of 2005

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